FOR ARGUMENT

Supreme Court, U. S.
FILED
JAN 18 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-334

KENNETH F. FARE,
Acting Chief Probation Officer,

Petitioner,

v.

MICHAEL C.,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

BRIEF FOR THE RESPONDENT

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BRIEF FOR THE RESPONDENT

SUMMARY OF ARGUMENT

Miranda v. Arizona, 384 U.S. 436 (1966) held that custodial interrogations inherently coerced confessions from suspects, in the absence of an advisement and waiver of the rights to silence and counsel. In this case, Michael was advised of those rights and was asked to waive them. Michael responded by asking for his probation officer.

Michael's request for his probation officer showed his lack of willingness to discuss the case with the police, and thus invoked his right to silence.

Michael's request for his probation officer also amounted to a request for counsel. As the California Supreme Court held, the special role of a probation officer in California meant that Michael's request for a probation officer was a "call for help," a request for a personal advisor duty-bound to assist Michael, whose presence could dispel the fear involved in custodial interrogations of juveniles. These very roles were relied on in *Miranda* as the reasons why a request for an attorney would invoke the Fifth Amendment.

Upholding the California Supreme Court does not require any "extension" of *Miranda*; it is the only way in which *Miranda* can be applied to juveniles so as to recognize the youth and immaturity of young persons, and to provide the "special considerations" required in reviewing juvenile confessions.

Moreover, Michael's "unequivocal" waiver of his rights was surrounded by no fewer than six expressions of his refusal to waive his rights and his fear of the police tricking him. Apart from the request for his probation officer, Michael repeatedly responded that he did not want to talk to the police, and finally did confess only after being threatened by the police. These constitute independent grounds to suppress the confession as involuntary on the "totality of circumstances" test, apart from any *Miranda* violation.

ARGUMENT

I

MICHAEL'S REQUEST FOR HIS PROBATION OFFICER INVOKED HIS FIFTH AMENDMENT RIGHTS

This court has always carefully examined confessions to insure that coerced, involutary confessions were not admitted at trials. The very integrity of the trial process requires that only evidence with some degree of reliability be usable in trial. This court has recognized that involuntary confessions are not likely to be true, and thus has fashioned a rule barring such statements from evidence. This case involves the voluntariness of a confession admitted as to a juvenile in California.

A. Michael's Request For His Probation Officer Invoked His Right To Remain Silent

The legal test for detemining when a suspect asserts his or her right to silence is whether the defendant indicates in *any manner* that he or she does not wish to be interrogated. *Miranda v. Arizona*, 384 U.S. 436, 445, 473-474 (1966). Did Michael in this case indicate *in any manner* that he did not wish to be interrogated?[1] Michael expressly requested his probation officer when

[1]This discussion is limited to the exchange *prior* to Michael's initial agreement to talk with the police. As discussed in III below, Michael on three occasions asserted his right to remain silent, very clearly, after his initial agreement to talk but prior to any admission as to the offense.

asked to waive his rights. A, at 55.[2] When asked to give up his right to have an attorney present, Michael instantly responded, "Can I have my probation officer here?" A, at 55. This clearly shows that Michael did not want to be interrogated at that moment, at least not without his probation officer. While Michael did not further say "I wish to assert my right to remain silent,"[3] he also did not unequivocally agree to talk. Therefore, Michael indicated, *in some manner*—by asking for his probation officer—a lack of willingness to talk *at that point*. Such a statement is all that is required to invoke the right to remain silent. Under the "express terms" of *Miranda* to find no assertion of the right to silence here.

This is in contrast to petitioner's claim of an "unequivocal waiver" of rights by Michael. Brief for the Petitioner, at 28. A request for a probation officer when a suspect is asked to waive his rights is hardly an "unequivocal waiver." It is in fact no waiver at all; it is *a manner* of indicating lack of willingness to talk.

B. Michael's Request For His Probation Officer Amounted To A Request For An Attorney

In addition to invoking his right to silence, Michael's request for his probation officer *amounted to* a request for counsel. True, Michael never expressly asked for "an attorney." This is understandable in light of what transpired during this interrogation. When told he could have an attorney, Michael asked how he could be

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[2]"A" refers to the Appendix filed under separate cover containing the record relevant to this case.

[3]Though what he said later was so close to such a statement as to be indistinguishable from an assertion of that right. See III below.

sure the police would not bring in a police officer and tell Michael that person was an attorney. A, at 55. Obviously, Michael knew of no attorney personally, and was unwilling to accept an "attorney" provided by the police. Given the admission by the police almost immediately afterward that they do not always play fair (A, at 56), Michael's lack of trust in a police-provided "attorney" is understandable.

Michael's request for his probation officer must be viewed in light of the role he anticipated an attorney would play in an interrogation situation. There is no discussion in *Miranda* of the legal skills of an attorney being necessary to the suspect being interrogated. (Contrary to the suggestion of Justice Rehnquist in his stay order in this case. *Fare v. Michael* C., 99 S. Ct.3, 6 (1978).) Instead, *Miranda* focused on the presence of counsel as being a method of dispelling the fear engendered by the custodial interrogation. *Miranda v. Arizona*, 384 U.S. 436, 466, 470 (1966). *Miranda* also relied on the duty of an attorney to his client, thus providing someone the suspect could rely on as being on his side during the interrogation. *Miranda v. Arizona*, 384 U.S. 436, 480, (1966).

Now of course *Miranda* did not involve a juvenile, so the court did not discuss the application of *Miranda* to minors. While *In re Gault*, 387 U.S. 1 (1967), applied the Fifth Amendent of the United States Constitution to juveniles, the precise application of *Miranda* was not delineated. Certainly, an attorney would fulfill for a juvenile the roles discussed above for adults. The question is whether a probation officer could similarly perform those functions. This court need not conclude that *every* request by a minor for a probation officer invokes *Miranda*. All it need do is hold that a request

for a probation officer by a minor asked to waive his rights during custodian interrogation *in California* amounts under *Miranda* to a request for an attorney.

In this case the California Supreme Court analyzed the significance of the request for a probation officer in California. The court noted the "close relationship" between minors and probation officers in California, citing California cases. *In re Michael C.*, 21 Cal.3d 471, 476 (1978). The court noted Michael's probation officer had instructed Michael to consult with him before waiving his rights so the probation officer could help him. *Ibid.* The court noted that Michael obviously wanted someone he could trust. *Ibid.* The court stated that Michael's probation officer was a personal advisor on whose advice he could rely. *Ibid.* The court characterized the probation officer as a "trusted guardian figure" exercising the *parens patriae* authority of the state. *Ibid.* The court stated that Michael was not asking to confide in a prosecutor, but was asking for help. *Ibid.* The court specifically noted the California statutory requirement that the probation officer act "to represent the minor." *In re Michael C.*, 21 Cal.3d 471, 477 (1978), quoting California Welfare and Institutions Code section 280. The court found that the probation officer in California has "the duty to advise and care for the juvenile defendant." *In re Michael C.*, 21 Cal.3d 471, 477 (1978).

In sum, the California Supreme Court held that a probation officer *in California* (relying exclusively on *California* cases and statutes) has a duty to act on behalf of a minor. The duty to act for the suspect was one of the grounds *Miranda* listed as the reason for having an attorney at the interrogation. The other reason *Miranda* gave for having an attorney was to

dispel fear at the interrogation. Again, the California Supreme Court has held that *in California* a request for a probation officer by a minor is a "call for help," a request for assistance in dealing with the police. *In re Michael C.*, 21 Cal.3d 471, 476 (1978). Thus, this kind of assistance would dispel the fear involved in the interrogation process.

A state court decision construing *state* statutory law is binding on this court as to that consideration. *Uphaus v. Wyman*, 364 U.S. 388, 389 (1960). The California Supreme Court has relied here on state statutes and California cases construing those statutes in concluding that a minor's request for a probation officer in California is a request for help from a person having a duty to act on behalf of the minor. Since that construction is binding on this court, and since the roles described by the California Supreme Court apply completely to the reason stated in *Miranda* for having an attorney at the police interrogation, Michael's request for his probation officer *amounts* to a request for an attorney in California, and thus bars further interrogation.

Any other conclusion would require that a minor formally request an attorney before interrogation must cease. This approach simply ignores the reality stated by the California Supreme Court: that a juvenile will not be in the position of being able to call an attorney for help, and it is unrealistic to attribute no significance to a call for help to a parent or guardian. *In re Michael C.*, 21 Cal.3d, 471, 475-476 (1978); *People v. Burton*, 6 Cal.3d 375, 382 (1971). This court has repeatedly held that "special" considerations must be given confessions made by juveniles to insure their voluntariness. See, e.g., *In re Gault*, 387 U.S. 1, 55 (1967); *Gallegos v.*

Colorado. 370 U.S. 49, 54 (1962); *Haley v. Ohio*, 332 U.S. 596, 599-600 (1948). Those statements are meaningless unless recognition is given to the realities of being a young person, with the immaturity and inexperience that accompany youth. It is not an "extension" of *Miranda* to hold that a minor's request for his probation officer amounts to a request for counsel; it is the *only* way to recognize under *Miranda* the "special" consideration required for juvenile confessions.

Under the "logic" of *Miranda*, a request for help to dispel fear by asking for someone with a duty to help the minor qualifies as much as an invocation of the right to counsel as an adult asking for an attorney to accomplish those same things. It would be truly ironic to require a youngster of tender years to invoke his or her rights by exclusively using the words or means an adult would use, when the "differences" between adults and juveniles are repeatedly used to *deny* minors certain rights every adult is entitled to—e.g., a jury trial. *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).

Inasmuch as the courts have recognized huge differences between adults and juveniles, it would be illogical to hold that minors can assert their rights under *Miranda* only by using adult formulations.

Petitioner relies on the dissent of *Miranda* to support the argument that counsel was recognized by the court because of the Sixth Amendment. Brief for the Petitioner, at 14-16. In fact, the majority opinion, as discussed above, did not rely on the Sixth Amendment or focus on the legal aspects of being an attorney to justify reliance on counsel. Instead, the court noted the role of an attorney in dispelling fear, and the duty of counsel to the suspect. In California, as noted, probation officers have a similar duty to minors.

Amicus curiae agrees that a request by Michael for an attorney would have invoked the Fifth Amendment, but urges that only a request for counsel would suffice, arguing that attorneys are best qualified to advise suspects of their legal rights. Brief Amici Curiae, at 13-14. Amicus misses the point: the role of the attorney is not to advise a suspect of his or her rights; that is the role of the police. As has been explained, the attorney's role is to dispel fear and act on behalf of the suspect. In California, probation officers perform those functions.

Petitioner then argues that probation officers cannot act on behalf of minors because probation officers are an arm of the prosecution. Brief for the Petition, at 17. Petitioner is wrong. The very case cited by petitioner expressly provides that the probation officer in California is an arm *of the juvenile court*, not the prosecution. *In re Steven C.*, 9 Cal.App.3d 255, 265 (1970). The probation officer has been called the juvenile court's "special officer." *In re Dennis H.*, 19 Cal.App.3d 350, 355, fn. 7 (1971). Petitioner correctly observes that probation officers in California are peace officers, but fails to state what powers are included in that designation. In fact, California Penal Code section 830.5, subdivision (a) makes probation officers peace officers but sharply limits their powers, basically providing that their powers extends only to conditions of probation. And California Welfare and Institutions Code section 283 makes juvenile probation officers peace officers but gives them only the powers provided in California Penal Code section 830.5, subdivision (a).

The probation officer did file this petition, on Michael's behalf, not against him. *In re Steven C.*, 9 Cal.App.3d 255, 264-265 (1970). Moreover, as a result of a subsequent statutory amendment, probation

officers no longer file juvenile petitions in California, further retracting their "prosecutorial" powers.[4] Lastly petitioner relies on the concurring opinion in the California Supreme Court to claim that the probation officer has to advise the minor to cooperate with the police, even to the extent of implicating himself in a serious felony. Brief for the Petitioner, at 17. But the *majority* opinion of the court held that the probation officer is *not* a prosecutor, and in fact has a duty to act *on behalf* of the minor. *In re Michael C.*, 21 Cal.3d 471, 476-477.

Amicus similarly argues that since the probation officer is a peace officer, asking for a probation officer is like asking for a police detective. Brief Amici Curiae, at 14-15. Not only does this suggestion overly simplify the significance of the words "peace officer," as used in California, but it too ignores that the majority opinion of the California Supreme Court expressly concluded Michael was not asking for a prosecutor, but was

[4]The precedent value of this court's decision in this case will be of limited significance, even in California. Whatever this court might hold as to the significance of a request for a probation officer by a minor on the facts in this case will simply be inapplicable to current law. A central focus of petitioner as been the peace officer status of the probation officer in California, including the role of the probation officer in filing the petition as to the minor. Probation officers did file petitions as of the time this case arose.

However, probation officers no longer file petitions in juvenile cases involving delinquency. California Welfare and Institutions Code section 650, which formerly provided that probation officers were to file delinquency petitions, was amended, effective January 1, 1977. Both the old and the amended sections can be found in the Brief for the Petitioner, at 6, 7. The new statute provides that the District Attorney is to file delinquency petitions instead of the probation department. Thus, the role of the probation officer has itself been changed since the commencement of this case. Any holding as to the effect of Michael asking for his probation officer back in 1976 under the old statute is merely dicta as to such a request today under the new statute.

asking for help from one duty bound to act on his behalf. *In re Michael C., supra.*

Petitioner then states that probation officers are not attorneys in any state, and that probation officers in almost every state in the union have peace officer powers or their equivalent. Even if petitioner was right, the wide variety of powers exercised by probation officers in these United States would itself suggest that roles of probation officers are so different as to preclude any simple, flat rule governing the effect of a request for a probation officer. But, again, petitioner is wrong.[5]

Seven states do expressly provide that juvenile probation officers are peace officers, with no limitations on such powers.[6]

[5]Frankly, it is somewhat amazing that the claims of petitioner as to the powers of probation officers in each state are so different from the actual powers authorized by law. Where discrepancies appear (and that is often), the correct statute and statement of powers is included, with petitioner's claims noted.

Petitioner's listing of statutes and powers is found at Brief for the Petitioner, at 17-19, fns. 4-9.

[6]Michigan: Mich. Stat. Ann., §27.3178 (598.14) (though petitioner lists Michigan as only providing limited authority to take a juvenile into custody. See also Mich. Stat. Ann. §27.3178 (598.10), providing that probation officers in Michigan can sit as referees); Nevada: Nev. Rev. Stat. §§62.120, 62.122; New Hampshire: N.H. Rev. Stat. Ann. §169: 6 (not N.H. Rev. Stat. §504: 4, listed by petitioner, which clearly applies to adults only); New York: N.Y. Crim. Proc. Law §1.20.33 (5) (but cf. *People v. Ronald W. (Anonymous),* 24 N.Y.2d 732, 735 (1968), holding that a probation officer need not give the *Miranda* advisement because a probation officer is not a "law enforcement officer" under *Miranda*); Ohio: Ohio Rev. Code Ann. §2151.14; Virginia: Va. Code §16.1-237; and Washington: Wash. Rev. Code Ann. §13.04.040 (the last three states—Ohio, Virginia, and Washington, are listed by petitioner as only giving probation officers the power to arrest, not as authorizing complete peace officer powers).

Fourteen jurisdictions give juvenile probation officers peace officer authority "in the performance of their duties." But the list of duties, and consequently the power derived therefrom, varies considerably among those states.[7]

Six states give juvenile probation officers the power to arrest only for violations of probation.[8]

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[7]Arizona: Ariz. Rev. Stat. §8-205; Colorado: Colo. Rev. Stat. §19-5-102; Connecticut: Conn. Gen. Stat. Ann. §17-58; District of Columbia: D.C. Code Encycl. §11-1524; Hawaii: Haw. Rev. Stat. §571-85; Iowa: Iowa Code Ann. §231.10 (this statute states that juvenile probation officers appear in court to represent the "interests of the child."); Kentucky: Ky. Rev. Stat. §208.320 (the above seven jurisdictions are listed by petitioner as giving full peace officer powers to probation officers); Louisiana: La. Rev. Stat. Ann. §13: 1587 (listed by petitioner as giving on the power to arrest to probation officers); Massachusetts: Mass. Gen. Laws Ann. ch. 276 §90; Minnesota: Minn. Stat. Ann. §260.311; Missouri: Mo. Ann. Stat. §211.401; South Carolina: S.C. Code §24-21-280 (listed as S.C. Code §15-1377 by petitioner); South Dakota: S.D. Compiled Laws Ann. §26-7-9; Texas: Texas Ann. Civ. Stat. art. 5142 (the above six states are listed by petitioner as giving full peace officer powers to probation officers).

[8]California: Cal. Welf. & Inst. Code §283, Cal. Penal Code §830.5 (1) (listed by petitioner as providing full peace officer powers; actually such authority applies only to "conditions of probation").

Florida: Fla. Stat. Ann. §390.03; Montana: Mont. Rev. Codes Ann. §10-1234 (5), (Mont. Rev. Codes Ann. §10-1234 (1) provides that no law enforcement officer can be a probation officer); Nebraska: Neb. Rev. Stat. §§29-2255, 29-2266 (petitioner cites Neb. Rev. Stat. §§29-2216, 29-2258, which apply to adult probation officers only; petitioner lists Nebraska as giving probation officers the authority to arrest, without noting that this only applies to violations of probation); New Mexico: N.M. Stat. Ann. §13-14-9 (not N.M. Stat. Ann. §13-14-8, as listed by petitioner), and Utah: Utah Code Ann. §78-3a-29 (listed by petitioner as authorizing arrests; actually, it authorizes only arrests for violations of probation, or in an emergency where no peace officer is available; otherwise probation officer arrest powers are expressly the same as those or private citizens, presumably including attorneys).

Seven jurisdictions give probation officers the power to arrest only those minors who already are wards of the court.[9]

Four states allow juvenile probation officers to arrest wards of the juvenile court, but only with the approval of the juvenile court.[10]

In three states, the status of juvenile probation officers is unclear.[11]

Seven states simply do not list any peace officer

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[9]Georgia: Ga. Code Ann. §24A-602 (but cf. *Huff v. Walker*, 187 S.E.2d 343, 125 Ga.App. 251, 252 (1972) holding that a juvenile probation officer cannot apply for a search warrant, because such application can only be made by an officer of the state "charged with the duty of enforcing criminal laws."); Idaho: Idaho Code §16-1820 (listed by petitioner as giving full peace officer powers; the section also states that the probation officer "shall be a friend of the child at all times."); Maine: 34 Me. Rev. Stat. §1682; Oklahoma: 10 Okla. Stat. Ann. §1205(a); Oregon: Or. Rev. Stat. §419.610 (listed by petitioner as giving full peace officers powers); Rhode Island: R.I. Gen. Laws §14-1-33; United States of America: 18 U.S.C.A. §3653.

[10]Alabama: 13 Ala. Code §105 (providing that probation officers are not law enforcement officers where probation is not involved; petitioner lists the statute as Ala. Code §12-15-7); North Dakota: N.D. Cent. Code §27-20-06 (specifically providing that the probation officer is *not* a law enforcement officer); Pennsylvania: 11 Pa. Stat. Ann. §50-201; Tennessee: Tenn. Code Ann. §37-206 (also specifically providing that the probation officer is *not* a law enforcement officer).

[11]Alaska: Alaska Stat. §§47.10.142, 47.10.140, and 33.05.070 (probation officers can arrest probationers, but no reference to juvenile probation officers); New Jersey: N.J. Stat. Ann. §§2A: 4-11, 2A: 4-31, and 2A: 4-32 (N.J. Stat. Ann. §2A: 168-4, cited by petitioner, clearly applies only to adults; N.J. Stat. Ann. §2A: 4-12 authorizes probation officers in juvenile cases to sit as referees); Wisconsin: Wis. Stat. Ann. §§54.15, 54.03, (apparently applying only to persons over 17), 48.12 and 48.28.

powers or functions as to juvenile probation officers.[12]

And finally, four states expressly provide that juvenile probation officers are *not* peace officers.[13]

In sum, the variety of the status and powers of juvenile probations officers throughout the United States is extremely wide, ranging from full peace officers to limited arrest powers, to powers over wards on probation, or to no peace officer powers at all. It is

[12]Arkansas: Ark. Stat. Ann. §45-415; Delaware: 10 Del. Code §911 (making probation officers "conservators of the peace," a reference defined to include judges in the Delaware Constitution, art. XV, §1; petitioner lists Del. Code tit. 11, §4321 as giving full peace officer status, which it does, but only to *adult* probation officers); Illinois: Ill. Ann. Stat., ch. 37, §706-1, (Ill. Ann. Stat., ch. 38, §204-3, cited by petitioner, clearly applies only to adult probation officers); Kansas: Kan. Stat. Ann. §38-814 (authorizes probation officers to take a minor into custody only for the court to make a disposition order); Maryland: Md. Ann. Code, Cts. and Jud. Procd. §3-814 (contrary to petitioner's claim that this section provides probation officers with limited authority to take a minor into custody, the section merely states that only a law enforcement officer or other person authorized by the juvenile court may arrest a minor, making no reference to probation officers at all); Mississippi: Miss. Code Ann. §§43-21-43 and 43-23-43 (contrary to petitioner's claim that these sections only allow an arrest where the court requests it, neither provision refers to peace officers at all); and North Carolina: N.C. Gen. Stat. §110-23 (contrary to petitioner's claim, this section makes reference only to supervision of probationers and says nothing whatever about probation officers having full peace officer powers).

[13]Indiana: Ind. Code Ann. §31-6-9-4 (c) (5) (providing for supervision only, stating probation officers are *not* law enforcement officers; Ind. Code Ann. §31-5-7-12, cited by petitioner, merely states that probation officers are not forbidden to arrest; Ind. Code Ann. §33-12-2-22, cited by petitioner, has been repealed); Vermont: 33 Vt. Stat. Ann. §638 (Vt. Stat. Ann. tit. 28, §301, cited by petitioner, does give the powers to arrest to probation officers for violations of probation, but appears to refer to adults only); West Virginia: W. Va. Code §49-5-15(a); Wyoming: Wyo. Stat. §5-3-504 (petitioner lists Wyo. Stat. §7-31 as giving the power to arrest; no such section exists).

simply impossible to formulate a rule as to the effect of a request by a minor for a probation officer which could reasonably govern all these disparate rules. In two states, such a request could also be a request for the juvenile court referee.[14]

Petitioner attempts to answer the characterization by the California Supreme Court of Michael's request for his probation officer as a request for a personal advisor on whose advice he could rely (21 Cal.3d at 476) by arguing that the record in this case "does not establish respondent's fear of the police, ignorance of the law or trust in his probation officer, . . . " Brief for the Petitioner, at 16.

One wonders how much of a record is required to show Michael feared the police. Before any waiver of rights, Michael was told he could have an attorney but not his probation officer. Michael responded by asking, "How I know you guys won't pull no police officer in and tell me he's an attorney?" A, at 55. Michael then repeated this question, clearly showing his lack of trust in the police, a fear borne out by the officer's candid admission, "Well, we don't always play fair, do we?" A, at 56. Later, Michael stated "I don't know what you got (Unintelligible) . . . search warrant to kick in my front door (Unintelligible) . . . ," to which the officer responded, "We'll get by that—" A, at 64. Lastly, the officer informed Michael, "Somebody is going to tell us what happened and the one who tells us what happened is the one that's not going to get hasseled. (sic.)" Michael replied, "They say that to just get you to cop out and then they'll back whatever you

[14]Michigan (Mich. Stat. Ann. §27.3178 (598.10) and New Jersey (N.J. Stat. Ann. §2A: 4-12).

want to call it. They'll fuck you (Unintelligible) . . . just to hear you talking . . ." A, at 65. All this happened prior to Michael making any confession in this case. Next there is a "Pause in recording," (A, at 66), characterized by defense counsel and the juvenile court as "crying." A, at 53. Then Michael confessed.

Thus, the facts clearly show a frightened youngster who was terrified of the police and feared he would be tricked.

Contrary to petitioner's claim that the record shows neither Michael's ignorance of the law or his trust in his probation officer, Michael's request for his probation officer demonstrates both these things. After all, Michael feared the police would trick him by bringing in a police officer and telling him that person was an attorney. Michael clearly wanted someone he knew and could trust, not any unknown quantity. And he must have wanted that trusted person to help him since the request for his probation officer was made directly in response to the inquiry whether Michael waived his right to counsel. A, at 55.

Petitioner further argues that the subjective intent of a suspect asking for a probation officer "cannot be predicated with sufficient certainty to justify the per se rule" set out by the California Supreme Court in view of the wide variety of powers conferred upon juvenile probation officers. Brief for the Petitioner, at 19. This very diversity of roles of probation officers toward minors throughout the country bars any "per se" rule that a request for a juvenile probation officer *not* invoke *Miranda*. And the California Supreme Court, as noted above, has discussed the role of the probation officer in California, along with a discussion of the record of this case, and concluded that *Michael* was

invoking his rights. The court did not purport to make any general rule, but merely held that "the minor" "here" invoked *Miranda* by asking for "his" probation officer. *In re Michael C.*, 21 Cal.3d 471, 476 (1978).

Petitioner next complains that the police and other trial courts are left to speculate as to whether requests for a coach, clergyman, or other person, are requests which invoke *Miranda*. Brief for the Petitioner, at 23. This is not true. The California Supreme Court expressly answered this claim, holding that such requests are "entirely distinguishable," citing the unique role of the probation officer *in California*. *In re Michael C.*, 21 Cal.3d 471, 477 (1978).[15]

Petitioner also complains that if states are allowed to add to the list of persons who when requested invoke *Miranda*, precise rules for law enforcement will be lost. Brief for the Petitioner, at 27. But the rules are clear: a request for help by a suspect invokes *Miranda*, where the roles described in *Miranda* are fulfilled. As to a juvenile in California, a request for his probation officer is a request for advice from someone whose duty is to the minor, and such a call for help to dispel fear of the custodial interrogation bars further interrogation. Such a rule is clear and specific. Of course, states are free to expand upon *Miranda* anyway, relying on their own Constitutions.

Amicus argues that the holding of the California Supreme Court inevitably means that a request to

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[15]Under the *Miranda* test that the right to silence is exercised by indicating in any manner a lack of willingness to talk, a request for someone else should invoke *Miranda*. Even a request to see another police detective shows lack of willingness to talk with the police officer seeking a waiver.

speak to "anyone" would invoke *Miranda*. Brief Amici Curiae, at 15. This concern was fully answered by the California Supreme Court in delineating certain features of the probation officer's role in California which made Michael's request for his probation officer tantamount to a request for counsel. These features clearly would not apply to "anyone".[16]

Petitioner argues that inquiries into whether a suspect wishes to talk with a probation officer, parent, etc. "do not reach the fundamental point of *Miranda* which is that interrogation should not be undertaken by the police unless that suspect is informed of his rights and indicates a willingness to speak." Brief for the Petitioner, at 19. This misconceives the nature of *Miranda*, which was to dispel the inherently coercive nature of police custodial interrogation by requiring an advisement and waiver of both the right to silence and to an attorney. Determining whether one of those rights is being asserted is essential to insuring the voluntariness of statements by suspects.[17]

[16]Amicus also argues that persons other than attorneys might not be able to properly advise a minor. This is why a request for anyone was not held by the California Supreme Court to invoke *Miranda*. Amicus cites *M.D.G. v. State*, Okla. Ct. Crim. App., 24 Cr. L. 2079 (9/26/78), where the court held that a father's waiver of *Miranda* was insufficient to allow the minor's confession into evidence. Brief Amici Curiae, at 14. All that case held as that a *personal* waiver of rights is required; no one—parent, attorney, or probation officer—can waive someone else's rights.

[17]Petitioner devotes considerable space to a discussion of whether an adult advisor must be present before a juvenile can waive *Miranda*. Brief for the Petitioner, at 28-32. While this is a very interesting issue, it is wholly inapplicable to this case. Respondent has never at any point in either the California or federal courts claimed that Michael's confession was inadmissible because no adult advisor was present. The point has never been raised by either side or any court, and has never been briefed until now. It was not included in the petition for writ of certiorari. It certainly cannot be raised for the first time, by petitioner, at this late date.

II

MICHAEL'S REQUEST FOR HIS PROBATION OFFICER WAS WITHIN THE "EXPRESS TERMS AND LOGIC" OF *MIRANDA*

Prior to this court's decision in *Miranda v. Arizona*, 384 U.S. 436 (1966), the determination as to whether a confession was admissible in a criminal proceeding was the "totality of circumstances" test: whether all the circumstances considered together showed that the statement was involuntary or not. See, e.g., *Frazier v. Cupp*, 394 U.S. 731, 738 (1968).

In *Miranda* this court discussed interrogations conducted by police of suspects in custody. The *Miranda* court recognized that such custodial interrogations were inherently coercive, and statements obtained therefrom were involuntary. *Miranda v. Arizona*, 384 U.S. 436, 461 (1966). *Miranda* provided a mechanism to allow police to conduct custodial interrogations in such a manner as to dispel the inherent coerciveness surrounding them, by requiring the police to advise suspects of their rights to remain silent and to counsel *prior* to the commencement of the interrogation. The court concluded that the request of a suspect to remain silent, or for his attorney, would show that suspect's intention not to make a voluntary statement, rendering any statement obtained therafter involuntary as a matter of law. *Miranda v. Arizona*, 384 U.S. 436, 473-474 (1966).

The *Miranda* decision was a recognition that a person undergoing custodial interrogation at the hands of the police needs the protection of an advisement of

rights and the opportunity to be told of the right to have someone advise him to assist in the exercise of those rights.

In effect, *Miranda* reasoned that a person in police custody confessing during interrogation by law enforcement is not making a free and voluntary statement, but rather is simply submitting to authority, unless an advisement of rights is given to dispel the coerciveness inherent in the situation. In contrast to *Miranda*, this court in *Schneckloth v. Bustamonte*, 412 U.S. 218 (1972) held that an advisement of rights is not required prior to the giving of a consent to search. The court noted the *Miranda* discussion of the inherent coerciveness of custodial interrogation, but distinguished that from the request for consent. The court noted that in *Miranda* the suspect was in police custody, while a consent to search is often requested at the suspect's own property where coerciveness ordinarily would be absent. *Schneckloth v. Bustamonte*, 412 U.S. 218, 247 (1972) Thus *Schneckloth* essentially reinforces the *Miranda* court's observations concerning the submission to authority involved in custodial, as opposed to noncustodial, interrogation.

Miranda has never been overruled. Nor does petitioner ask that *Miranda* be overruled in the Questions Presented. *Miranda* has been limited in its application, and certainly not expanded. But the core of *Miranda* remains: custodial interrogation is inherently coercive, and can only result in a voluntary relinquishment of rights where those rights are expressly stated to the suspect and expressly waived by the suspect.

A. Michael Did Clearly Invoke the Fifth Amendment Prior To Confessing

Petitioner questions the standard used by the California Supreme Court: that anything done by the suspect which "reasonably appears inconsistent" with a present willingness on the part of the suspect to discuss the case freely and completely with the police at that time amounts to an invocation of the Fifth Amendment of the United States Constitution, and renders any subsequent statement involuntary as a matter of law. Brief for the Petitioner, at 20. Petitioner argues that where an ambiguous answer is given, the police should be allowed to question further to "clarify" the intention of the suspect as to whether an assertion of rights is really meant. Brief for the Petitioner, at 20. However, the California Supreme Court is simply restating the express terms of *Miranda*, that if a suspect *in any manner* indicates a wish to remain silent, further questioning is barred. This is simply a recognition of the inherent coerciveness of custodial interrogation. Any answer can be construed as "ambiguous," since even "I don't want to talk" could be merely a request for a few minutes time before making a statement. This approach inevitably requires *Miranda* be expressly overruled, custodial interrogation be discarded as a relevant consideration, and only the totality of circumstances test be used.

Petitioner simply ignores the reality described in *Miranda* of the submission to authority inherent in custodial police questioning. If even an assertion of the right to remain silent or a request for an attorney allows further questioning to "clarify" the intent of the suspect, the inherent coerciveness of custodial inter-

rogation will cause the suspect to submit to authority and make a statement, clearly involuntarily.

Petitioner "illustrates" this point by claiming that Michael made an ambiguous request in this case by asking for his probation officer, and that further questioning by the police "clarified" Michael's intent by obtaining an unequivocal waiver afterwards. Brief for the Petitioner, at 23. On the contrary, this case illustrates the involuntariness of Michael's statement, and the inherent coerciveness of allowing the police to continue to question a suspect after an assertion of rights. Michael did more than merely ask for his probation officer, have his rights re-explained, then unequivocally waive them. Michael asked for his probation officer, and was told he could not have his probation officer but could have an attorney. Michael then asked the police how he could know the police would not bring in a police officer and tell Michael he was attorney. Michael repeated this statement, which is never responded to by the police. A, at 55. This is hardly illustrative of an ambiguous answer properly clarified by the police to show that no assertion of rights was intended. Michael's comments clearly show his lack of trust in the police, and his suspicion that they would trick him. (A suspicion certainly enhanced by the police comment, moments later, "Well, we don't always play fair, do we?" A, at 56.) The record is thus absolutely clear that Michael was not willing to discuss the case completely and freely with the police; he felt they might trick him, and he asked for someone he knew to avoid that from happening.

Ignoring that reality requires the overruling of *Miranda*, which precisely recognized this possibility, and thus mandated both the advisement and the

unequivocal waiver not present here. That Michael eventually said the words, "Yeah, I want to talk to you," (A, at 55) does not demonstrate the voluntariness of the statement in light of the exchange preceding it, any more than such a statement would show voluntariness after torture. Michael showed his reluctance and fear of the police at the outset; his later statements were thus clearly involuntary and merely a submission to the continued pressure of the custodial interrogations in this case.

Petitioner also argues that the *Miranda* advisements have been "noted" by this court as "not necessarily indispensable to the Fifth Amendment privilege against self-incrimination." Brief for the Petitioner, at 25, fn. 11. Petitioner cites two cases for this astounding assertion, *Brown v. Illinois*, 422 U.S. 590, 600 (1975), and *Michigan v. Payne*, 412 U.S. 47, 53 (1973). Brief for the Petitioner, at 25, fn. 11.

Both cited cases state that the *Miranda* advisements are "prophylactic." But *Brown v. Illinois*, *supra*, held that the *Miranda* advisements did not automatically and of themselves break the chain of illegality following an illegal arrest. And *Michigan v. Payne*, *supra*, held that *North Carolina v. Pearce*, 398 U.S. 711, (1969) was not retroactive in its application. These cases hardly support the claim that the *Miranda* advisements are "not necessarily indispensable" to the Fifth Amendment. Of course, no case has ever overruled the holding of *Miranda*, that an advisement and waiver of rights is required for a confession resulting from custodial interrogation to be deemed voluntary.

B. Miranda's "Inflexibility" Insures Truly Voluntary Confessions

Amicus Curiae for petitioner complains that the problem with *Miranda* is its "inflexibility." Brief Amici Curiae, at 6. Of course, the requirement that only voluntary confessions are admissible is an "inflexible" rule. It does not allow the flexibility to allow involuntary, but true, statements into evidence. This approach would return us to confessions obtained by torture.

Miranda recognized that the only way to dissipate the inherent coerciveness of custodial interrogation so as to avoid involuntary statements was to require an advisement and waiver of rights. That firm, "inflexible" rule provides that only stable, guaranteed mechanism to insure that confessions are not merely the result of the coercion resulting from interrogations conducted by police with a suspect in custody. Nothing short of requiring an advisement and waiver will suffice to rectify the coerciveness that otherwise results from custodial police interrogations.

Amicus urges that the inflexibility of *Miranda* is demonstrated by this case, listing several reasons. Brief Amici Curiae, at 16. Amicus first claims that there was no coercion by the police. In fact, there was coercion, see III below. But apart from that, the inherent coercion of the custodial interrogation is shown by Michael's request for his probation officer, followed by his request for his probation officer, followed by his question as to how he could be sure that police would not trick him. A, at 55. Michael's "agreement" to make a statement after the initial exchange shows that he was not voluntarily making the statement, but rather was

submitting to the coercion of the interrogation itself.

Second, Amicus observes that the "suspect stated expressly that he was willing to talk to the police." Brief Amici Curiae, at 16. It is true Michael at one point said those words. See A, at 55. Of course, when he was first asked to talk, Michael said "Yeah, I might talk to you," hardly an unequivocal consent. A, at 55. Moreover, Michael's request for his probation officer, and his fear that the police would trick a statement out of him, all of which preceded the express statement of willingness to talk (A, at 55), further reflect Michael's failure to unequivocally express a willingness to talk with the police.[18]

Third, Amicus states that "the suspect confessed, voluntarily, to a serious crime: murder;" Brief Amici Curiae, at 16. Of course, the voluntariness of the statement is precisely in issue in this case. Further, in III below, respondent argues the involuntariness of the statements, even under the old totality of circumstances test. Amicus fails to explain the significance of the fact that the crime was "serious." Logically, the more serious the case, with the more serious potential for confinement as a result, the more important it is to insure that a suspect is protected from coercion, and that truth is ascertained.

Fourth, Amicus states that the minor was "convicted" by the trial court and that "conviction" was affirmed

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[18] Michael's "express statement of willingness to talk with the police, made once, stands in stark contrast both to the above dialogue prior to that "agreement" to talk, and to the three separate occasions after the statement he would talk to the police, prior to making any admission, when Michael was asked by the police to tell them what happened, and he said "No." (See III, below.) A more unambiguous assertion of the right to remain silent is hard to imagine.

by an unanimous California court of appeal. Brief Amici Curiae, at 16. Of course, the only "evidence" of the minor's involvement was the confession here at issue. In addition, upon petition for rehearing, one of the justices in the court of appeal voted to grant a rehearing as to the affirmance of appeal. Lastly, once the California Supreme Court granted a hearing in this case, the court of appeal opinion was vacated, became a nullity, and thus cannot now be used for any purpose. Rule 976 (d), Cal. Rules of Ct.; *People v. Rogers*, 21 Cal.3d 542, 547 (1978); *Ponce v. Marr*, 47 Cal.2d 159, 161 (1956).

Fifth, and last, Amicus argues that "there is nothing in the record on appeal which casts the slightest doubt on Michael C's factual guilt." Brief Amici Curiae, at 16. This is ironic in light of the admission by Amicus that without the confession the evidence is insufficient to sustain a conviction on appeal. Brief Amici Curiae, at 17, and fn. 12. And clearly the issue at this point of the case is not whether Michael is or is not guilty, factual issues not being cognizable on appeal, but rather whether the confession which is the only "evidence" of Michael's "guilt" is involuntary and thus inadmissible.

What any of the above "factors" have to do with "flexibility" is unclear. As noted above, a fixed rule is necessary to insure truly voluntary confessions. Ironically, the very criticism made by Amicus, that the *Miranda* rule is inflexible, is the very point made by Justice Rehnquist in the stay order in this case as the main value of *Miranda* according to its supporters: its clarity and certainty. *Fare v. Michael C.*, 99 S. Ct. 3, 5 (1978).

In sum, a fixed rule is required to insure that there is adequate protection against the inherent coerciveness

of custodial interrogation. That is the main benefit of *Miranda*.

C. Miranda Does Not Allow Guilty Persons To Be Set Free on Technicalities

Petitioner warns of "The most heinous of crimes" that may go unprosecuted because of a "technical" violation of *Miranda*. Brief for the Petitioner, at 12. Of course, if there is proof of guilt apart from the confession, the prosecution is free to present it to secure a conviction. If the *only* evidence of guilt is a confession, special concern must be given to insure that the confession is true. That is precisely why torture and extortion are not allowed to obtain statements. Involuntary statements are not sufficiently reliable to support a conviction where only the accused's confession points to guilt. Logic dictates that a statement obtained only because of a suspect's submission to authority fits into the same category. That is why *Miranda* sets up protections to insure that statements are obtained voluntarily, and not just as a result of the coercion of custodial interrogation.

Petitioner asserts that all *Miranda* intended to bar was confessions that were compelled, where the suspect's free will was overborne. From this, Petitioner concludes that where *Miranda* advisements are given, the totality of circumstances test should be used as the only measure of voluntariness. Brief for the Petitioner, at 26-27. This approach would require that the very core of *Miranda* be discarded. *Miranda* used the warnings therein discussed as only the initial step; the second, and critical step, was the *waiver* of rights. As discussed above, both the right to silence and the right

to counsel must be expressly waived, and *any* indication of lack of willingness to talk invokes the right to remain silent. Petitioner's approach of requiring only certain words be spoken by the police, with an assertion of rights being limited to the speaking of certain words by the suspect in response, would transform concern *Miranda* expressed as to the coerciveness of custodial interrogation into a mere ritual to be performed without content.[19]

This, above all, is what *Miranda* stands for: the police must inform a suspect in custody of his rights, and can interrogate the suspect only if he knowingly and intelligently gives up those rights. Content is everything; the advisement required by *Miranda* was simply an attempt to insure an understanding of the rights by suspects. *Miranda* does bar use of compelled confessions, and recognizes that custodial interrogation compels confessions. Petitioner never denies this. Nor does petitioner suggest any method other than the *Miranda* advisements to dissipate that compulsion.

Amicus complains of confessions suppressed "which were by any reasonable and objective standard voluntarily made," and suggests that guilty persons go free as a result. Brief Amici Curiae, at 8. Of course, Amicus fails to state which "reasonable and objective" standards were used by Amicus to determine the

[19]Petitioner never states what precise words would have to be spoken by a suspect to invoke the right to remain silent sufficiently to bar further police interrogation. One wonders if "No" to the question, "Do you want to tell us about it?" would suffice. Yet that precise exchange happened in this case, with Michael saying, "No." A, at 56. As noted in III, below, Michael on three occasions prior to the admission of the offense clearly told the police he did not want to talk with them.

"voluntariness" of those confessions. Amicus fails to deal with the *Miranda* court's conclusion that custodial interrogation is inherently coercive, rendering statements obtained as a result thereof, without actions to dissipate that coercion, involuntary.

While Amicus places great stress on freeing "patently guilty" persons as a result of the suppression of confessions due to *Miranda* (again, the same argument could be made to contest suppressing confessions obtained by torture), Amicus lists only six instances as examples. Of those, only two were mentioned as possibly resulting in dismissal on reversal. The claimed restrictions on law enforcement as a result of *Miranda* are hardly shown by listing a grand total of two cases where defendants may have been released for *Miranda* violations. Once again, one wonders how "patently guilty" a person is against whom there is no evidence whatever except a coerced confession.

It is interesting that Amicus chooses to claim that *Miranda* has a "detrimental" effect on law enforcement (Brief Amici Curiae, at 16) yet cites no authority for this proposition apart from the two cases noted above. In fact, many studies have been conducted concerning *Miranda*'s effect upon law enforcement. These studies have consistently shown that *Miranda* has had little if any impact on law enforcement, and has not caused a reduction in convictions or an increase in releasing "patently guilty" defendants.[20]

[20]*See Lederer, Miranda v. Arizona—The Law Today,* 78 Military Law Review 107, at 161 (1978); Witt, *Non-Coercive Interrogations and the Administration of Criminal Justice: The Impact of Miranda on Police Effectuality,* 64 J. Crim. L. & Criminology 320 (1973): Leiken, *Police Interrogation in Colorado: The Implementation of Miranda,* 47 Den. L.J. 1 (1970); Nedalie, Zeitz & Alexander, *Custodial Police*

(continued)

It appears that Amicus would establish a rule admitting involuntary confessions in cases with "patently guilty" individuals but barring them otherwise—the key focus being on factual guilt. If there is clear proof of guilt apart from the confession, one wonders why the confession need be admitted at all. And where the only evidence of guilt is a confession, this should hardly qualify as involving "patent guilt," and there is even greater reason to exclude an involuntary confession.

Amicus' request for a narrowing of the required exclusion of confessions in violation of *Miranda* is ironic. Amicus claims that law enforcement is constricted by technical rules unrelated to the voluntariness of statements made during interrogations. Such concern is in contrast to what counsel for Amicus tells law enforcement. Counsel for Amicus has published material for law enforcement advising them that this court has "tacitly" approved the use of "trickery and deceit" in obtaining confessions, even after *Miranda*. Inbau, *Legally Permissible Criminal Interrogation Tactics and Techniques*, 4 Journal of Police Science and Administration 249, at 251 (1976); Inbau and

(footnote continued from preceding page)
Interrogation in Our Nation's Capital: The Attempt to Implement Miranda, 66 Mich. L. Rev. 1347 (1968); Seeburger & Wettick, *Miranda In Pittsburgh—A Statistical Study*, 29 U. Pitt. L. Rev. 1 (1967); Comment, *Interrogation in New Haven: The Impact of Miranda*, 76 Yale L.J. 1641 (1967); Sobel, N., The New Confession Standards (1966), at 140-151; and perhaps the most interesting study, done by the petitioner in this case, Younger, Results of a Survey Conducted in the District Attorney's Office of Los Angeles County Regarding The Effect Of The *Miranda* Decision Upon The Prosecution Of Felony Cases, found at both American Criminal Law Quarterly 32 (1966) and 35 Fordham Law Review 159, 255-262 (1966).

Carrington, Evidence for the Police (1972) at 56.[21] Counsel for Amicus even now tells the police to use trickery and deceit, restrained only by the standard as to whether an innocent person would confess with the use of the particular deception planned by the police; only if an innocent person would confess is the deceit not allowed. *Ibid.* This is the same Amicus asking this court to abandon the strict rule of exclusion of confessions obtained in violation of *Miranda*. One only wonders what Amicus would tell the police was permissible after such an abandonment. Have we become so desperate for confessions at any price that we will encourage the police to go beyond trickery and deceit?[22]

Miranda has not been overruled; it is good law for the proposition that custodial interrogation by police is inherently coercive, and the only way to dispel that compulsion so as to render a resulting statement to be voluntary is to require an advisement and waiver of the rights to remain silent and to have counsel.

[21]Amicus reaches this astonishing conclusion by relying on *Frazier v. Cupp*, 394 U.S. 731 (1968), at 739 where this court held that a confession was not involuntary merely because the police lied to the defendant that an accomplice had confessed. Of course, *Frazier* expressly applied pre-*Miranda* law, *Frazier v. Cupp*, 394 U.S. 731, 739. All *Frazier* held was that, using the old totality of circumstances test, the lie told the defendant did not overcome the myriad factors showing voluntariness in that case.

[22]Use of trickery or deceit by a non-police officer to obtain, say, money, would of course be criminal fraud. See, e.g., California Penal Code Section 484(a).

III

MICHAEL'S STATEMENTS WERE INVOLUNTARY APART FROM THE *MIRANDA* VIOLATION

Both petitioner and Amicus repeatedly claim that there was no coercion in the obtaining of Michael's confession. Petitioner claims that nothing in the California Supreme Court opinion suggests coercion. Brief for the Petitioner, at 28. Amicus simply asserts that there was no coercive activity by the police. Brief Amici Curiae, at 16. This totally ignores the position consistently maintained by respondent that there was coercion in this case. Those contentions have been made in every single brief filed by respondent on the merits in every court proceeding to date. See, e.g., Reasons Why a Writ of Certiorari Should Not Be Granted, 7-10. Of course, a showing of coercion sufficient to establish an involuntary confession apart from the *Miranda* violations noted *ante* would provide an independent ground to support the California Supreme Court's decision. *Walling v. General Industries, Co.*, 330 U.S. 545, 547, fn. 5 (1947). The California Supreme Court did not reject these contentions, the court did not reach them because it disposed of the case on the first ground alleged, the *Miranda* violation.

There are two different indications in the record of involuntariness. Implied threats and promises were used, and Michael clearly showed he did not wish to be interviewed.

First, implied threats and promises were used to obtain the confession. Michael was told by the police during the interrogation, "You got a good chance that you can come out of this thing pretty good." A, at 65. He was then told, "Somebody is going to tell us what happened and the one who tells us what happened is the one that's not going to get hasseled (sic)." *Ibid.* These statements are immediately followed by an exchange of words and a "pause." A, at 66. Michael's conduct during the "pause" was described by defense counsel as "crying," A, at 53, a characterization in which the trial court acquiesced. A, at 53. Michael then "confessed." *Ibid.* It is unmistakably clear in these circumstances that such promises and threats were being employed by the police to obtain a confession. Such misconduct by the authorities renders the statement involuntary as a matter of law, and regardless of the applicability of *Miranda, supra,* compels reversal. *Lynumn v. Illinois,* 372 U.S. 528, 534 (1962).

Second, Michael repeatedly indicated his wish not to be interrogated.

Michael was asked almost at the outset if he wanted to tell the officers about the case. He said, "No, I don't know anything about it." A, at 56. When asked about what another minor had said, Michael answered, "I can't do that." When asked why, Michael said, "Because mama said don't tell strangers nothing." A, at 63. Finally, Michael was asked what happened that night, and he said, "Can't." A, at 64. It is therefore plain that on three distinct occasions, Michael told the police he no longer wished to talk with them.

These assertions of the right to remain silent are in addition to Michael's first answer to the request by the police that he talk with them, "Yeah, I might talk to you." A, at 55. Michael then requested his probation officer. *Ibid.* He further asked the police how he could know that the police would not bring in a police officer and tell Michael he was an attorney, and Michael then repeated that question. *Ibid.*

In sum, Michael repeatedly told the police he did not want to talk with them, and clearly showed his fear and distrust of the police. To characterize this as a confession obtained without coercion is to ignore the plain facts of the record.

This court is required to examine the entire record independently to determine whether a confession is involuntary. *Davis v. North Carolina*, 384 U.S. 737, 741-742 (1966); *Haynes v. Washington*, 373 U.S. 503, 515 (1962). The repeated assertions of the right to remain silent in this case clearly show that the confession thereafter obtained was voluntary, even under the totality of circumstances test.

CONCLUSION

For the foregoing reasons, respondent respectfully requests that the opinion and judgment of the California Supreme Court reversing the declaration of wardship be affirmed.

Respectfully submitted,

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